

Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue

Suite 1700

Austin, Texas 78701

(612) 472-8021

Fax (612) 320-5638

www.bickerstaff.com

November 10, 2006

Via Facsimile and U.S. Mail

Ms. LaDonna Castañuela
Office of the Chief Clerk, MC105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OPA 14

NOV 10 2006

BY

2015/11/10

CHIEF CLERK'S OFFICE

NOV 10 AM 10:14

TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Application No. 5931 by TXU Mining Company LP

Dear Ms. Castañuela:

On behalf of the Brazos River Authority (BRA), I protest the above-referenced application and request that a contested case hearing be held on the application.

BRA holds the following water rights: Certificate No. 12-5155 (Possum Kingdom Lake); Certificate No. 12-5156 (Lake Granbury); Certificate No. 12-5157 (Lake Whitney); Certificate No. 12-5158 (Lake Aquilla); Certificate No. 12-5159 (Lake Proctor); Certificate No. 12-5160 (Lake Belton); Certificate No. 12-5161 (Lake Stillhouse Hollow); Certificate No. 12-5162 (Lake Georgetown); Certificate No. 12-5163 (Lake Granger); Certificate No. 12-5164 (Lake Somerville); Certificate No. 12-5165 (Lake Limestone); and Permit No. 2925A (proposed Allens Creek Reservoir). One or more of these rights may be impaired if the application is granted. While it is possible that special conditions may be included in the permit in order to prevent any such impairment, BRA must protest the application in order to ensure that its water rights are protected.

Thank you for your attention to this matter. I request that the Brazos River Authority be placed on all notice lists so that it may receive notice of all further actions with regard to this application.

Sincerely,


Douglas B. Caroom

cc: Lauralee Vallon
David Wheelock
Brazos River Authority

BG

A Registered Limited Liability Partnership

<http://www.bickerstaff.com>

MESSAGE:

Bickerstaff, Heath, Pollan & Caroom, L.L.P.

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Austin, Texas 78701

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Fax (512) 320-5638

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November 10, 2006

Via Facsimile and U.S. Mail

Ms. LaDonna Castañuela
Office of the Chief Clerk, MC105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

NOV 14 2006

BY DM

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Thank you for your attention to this matter. I request that the Brazos River Authority be placed on all notice lists so that it may receive notice of all further actions with regard to this application.

Sincerely,


Douglas G. Caroom

cc: Lauralee Vallon
David Wheelock
Brazos River Authority

RECEIVED
OFFICE

NOV 14 10:25

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

WR
55107

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.A PROFESSIONAL CORPORATION
615 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3603
612 472-3283 • FAX 612 / 473-2609<http://www.baw.com>MICHAEL J. BOOTH
FRED B. WERKENTHIN, JR.
WIL CALLOWAYCAROLYN AHRENS
OF COUNSELFAX COVER SHEET

TO: LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality

FAX: (512) 239-3311 REF: 338

FROM: Lynn Borsch
For Fred B. Werkenthin, Jr.

RE: Hearing Request of Dow Chemical Company regarding Application No. 12-5931
of TXU Mining Company L.P. ("TXU")

DATE: December 4, 2006

PAGES: 1 (including this page)

MESSAGE: An original will be hand delivered to your office on Tuesday, December 5, 2006.

CHIEF CLERKS OFFICE

2006 DEC -4 PM 4:29

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITYCONFIDENTIALITY NOTICE

The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally privileged. The information is intended solely for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopy information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and arrange for return of the original documents to us.

WR
55107

H OPA

DEC 06 2006

BY

KY

BOOTH, AHRENS & WERKENTHIN, P.C.

515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3303
512/472-3203 • 512/473-2609

MICHAEL J. BOOTH
FRED B. WERKENTHIN, JR.
WILL GALLOWAY

CAROLYN AHRENS
OF COUNSEL

December 4, 2006

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk
12100 Park 35 Circle
Building F, First Floor
Austin, Texas 78753

VIA FACSIMILE & HAND DELIVERY
(512) 239-3311

RE: Hearing Request of The Dow Chemical Company regarding Application No. 12-5931 of TXU Mining Company L.P. ("TXU")

Dear Ms. Castañuela:

The Dow Chemical Company ("DOW") submits the following comments and request for a Contested Case Hearing regarding the above-referenced application. Please file-stamp the copy and return to the courier for our records.

Protestor Information

Paul Bork
1790 Building
The Dow Chemical Company
Midland, MI 48674
c/o Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
fbw@haw.com

CHIEF CLERKS OFFICE

704 DEC -5 AM 8:15

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Holder of Certificate of Adjudication No. 12-5328, as amended.

HW

LaDonna Castañuela
December 4, 2006
Page 2

CHIEF CLERK'S OFFICE

2006 DEC -5 AM 8:16

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Applicant Information

TXU Mining Company L.P.
1601 Bryan Street
Dallas, Texas 75201-3411

Application No. 12-5931

Hearing/Public Comment Request

We request a Contested Case Hearing.

Effect of Proposed Water Right

Under low flow conditions, DOW has difficulty obtaining the water it is entitled to because reduced flow in the Brazos River allows a salt wedge from the Gulf of Mexico to move upstream to the vicinity of DOW's diversion points. As a result, any new appropriations or expansions of use in upstream water rights adversely affects DOW's water rights.

TXU has applied for a new Water Use Permit to divert and use not to exceed 1,000 acre-feet per year from the Brazos River in Limestone and Robertson Counties. DOW believes that unless special conditions are added that would protect DOW's diversions during low-flow conditions, that TXU's Water Right will have the potential to exasperate DOW's problems of obtaining the water its entitled to during low flow conditions. DOW believes that the permit conditions should be based on the flows in the Lower Brazos River, perhaps at the Richmond gage or the Rosharon gage.

Location of Dow's Water Right

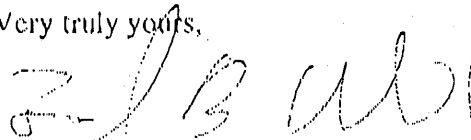
DOW's water rights are located on the Brazos River in Brazoria County downstream from TXU's proposed diversion points.

LaDonna Castañuela
December 4, 2006
Page 3

Conclusion

DOW files these comments and requests that the Texas Commission on Environmental Quality convene a Contested Case Hearing regarding TXU Mining Company's Application No. 12-5931.

Very truly yours,



Fred B. Werkenthin, Jr.
Attorney for The Dow Chemical Company

FBW/ram

cc: Paul Bork
1790 Building
The Dow Chemical Company
Midland, MI 48674

VIA EMAIL

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.
A PROFESSIONAL CORPORATION
615 CONGRESS AVENUE, SUITE 1616
AUSTIN, TEXAS 78701-3603
512 / 472-3263 • FAX 512 / 473-2600
<http://www.baw.com>

MICHAEL J. BOOTH
FRED B. WERKENTHIN JR.
WIL GALLOWAY

CAROLYN AHRENS
OF COUNSEL

FAX COVER SHEET

OPA ^H

DEC 15 2006

BY g

Ref: 338

TO: LaDonna Castañuela Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality

FAX: (512) 239-3311

FROM: Lynair Borsch
For Fred B. Werkenthin, Jr.

RE: Hearing Request of The Dow Chemical Company regarding Application No. 12-
5931 of TXU Mining Company L.P. ("TXU")

DATE: December 4, 2006

PAGES: 4 (including this page)

MESSAGE: Ms. Castañuela:

Due to a typographical error, please disregard the Hearing Request which was faxed earlier this afternoon and accept this supplemental Hearing Request.

An original will be hand delivered to your office Tuesday, December 5, 2006.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 DEC -5 AM 8:15
CHIEF CLERKS OFFICE

CONFIDENTIALITY NOTICE

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CM

OPA#

DEC 13 2006

ATTORNEYS AT LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C. BY gc

515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
512/473-2603 • 512/473-2000

MICHAEL J. BOOTH
FRED B. WERKENTHIN, JR.
WIL GALLOWAY

WR
55107

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 DEC 4 PM 4:29
CAROLYN AHRENS
CHIEF CLERK'S OFFICE
OF COURTESY

December 4, 2006

LaDonna Castañeda
Texas Commission on Environmental Quality
Office of the Chief Clerk
12100 Park 35 Circle
Building F, First Floor
Austin, Texas 78753

VIA FACSIMILE & HAND DELIVERY
(512) 239-3311

RE: Hearing Request of The Dow Chemical Company regarding Application No.
12-5931 of TXU Mining Company L.P. ("TXU")

Dear Ms. Castañeda:

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Protestor Information

Paul Bork
1790 Burlingame
The Dow Chemical Company
Midland, MI 48674
c/o Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
fbw@abaw.com

Holder of Certificate of Adjudication No. 12-5328, as amended.

Handwritten initials "CW" in the bottom right corner.

OPA *H*

LaDonna Castaneda
December 4, 2006
Page 2

DEC 13 2006

BY *js*TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

CHIEF CLERKS OFFICE

2006 DEC -4 PM 4:29

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TXU Mining Company L.P.
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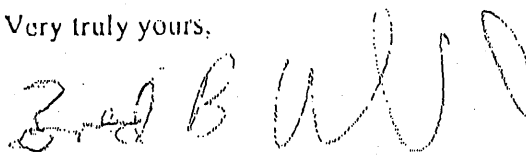
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LaDonna Castanuel
December 4, 2006
Page 3

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Very truly yours,



Fred B. Werkenthin, Jr.
Attorney for The Dow Chemical Company

FBW/ram

cc: Paul Bork
1790 Building
The Dow Chemical Company
Midland, MI 48674

VIA EMAIL

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.

A Professional Corporation
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
512/472-3263 • 512/473-2609

MICHAEL J. BOOTH
FRED B. WERKENTHIN, JR.
WIL GALLOWAY

CAROLYN AHRENS
OF COUNSEL

December 4, 2006

OPA
H DEC 06 2006
RY

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk
12100 Park 35 Circle
Building F, First Floor
Austin, Texas 78753

VIA FACSIMILE & HAND DELIVERY
(512) 239-3311

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
206 DEC -5 PM 12:16
CHIEF CLERK'S OFFICE

RE: Hearing Request of The Dow Chemical Company regarding Application No. 12-5931 of TXU Mining Company L.P. ("TXU")

Dear Ms. Castañuela:

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Paul Bork
1790 Building
The Dow Chemical Company
Midland, MI 48674
c/o Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
fbw@baw.com

Holder of Certificate of Adjudication No. 12-5328, as amended.

W

LaDonna Castañuela
December 4, 2006
Page 2

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TXU Mining Company L.P.
1601 Bryan Street
Dallas, Texas 75201-3411

Application No. 12-5931

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CHIEF CLERK'S OFFICE

2006 DEC -5 PM 12:16

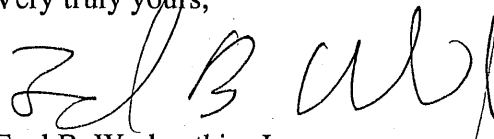
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

LaDonna Castañuela
December 4, 2006
Page 3

Conclusion

DOW files these comments and requests that the Texas Commission on Environmental Quality convene a Contested Case Hearing regarding TXU Mining Company's Application No. 12-5931.

Very truly yours,

A handwritten signature in black ink, appearing to read 'F B Werkenthin, Jr.', written over the closing 'yours,'.

Fred B. Werkenthin, Jr.
Attorney for The Dow Chemical Company

FBW/ram

cc: Paul Bork
1790 Building
The Dow Chemical Company
Midland, MI 48674

VIA EMAIL



H OPA
DEC 06 2006
BY KY

P.O. Box 4710
Houston, Texas 77210

WR
55107

December 4, 2006

Via Facsimile (512-239-3311) and Regular Mail

LaDonna Castanuela
Chief Clerk
TCEQ - MC 204
P.O. Box 13087
Austin, Texas 78711 3087

RE: Hearing Request of NRG Texas LP regarding Application No. 5931 of TXU Mining Company LP ("TXU Mining")

Dear Ms. Castanuela

By this letter, NRG Texas LP ("NRG Texas") submits the following comments and requests a contested case hearing regarding Application No. 5931 of TXU Mining Company LP.

Protestor Information

Jason Fluharty
NRG Texas LP
P.O. Box 4710
Houston, Texas 77210
713-795-6209
713-945-7598 (fax)
Jason.Fluharty@nrgenergy.com

c/o Carolyn Ahrens
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(512) 472-3263
(512) 473-2609 (fax)
carolyn@baw.com

NRG Texas is a Texas limited partnership having its principal place of business in Houston, Harris County, Texas, and is engaged in the business of generating and supplying electric energy. NRG Texas has invested greatly in its water supplies, including the water supplies necessary for the continued operation of power generation at the W.A. Parish Electric

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 DEC -4 11:11:07
CHIEF CLERK'S OFFICE

WR

Ms. LaDonna Castanuela
December 4, 2006
Page 2 of 3

Generating Station in Fort Bend County, Texas. The Parish facility is the largest fossil fuel power plant by generating capacity in Texas and in the United States.

NRG Texas owns Certificate of Adjudication No. 12-5320 authorizing diversion and use of water from a point on the Brazos River in the John T. Edwards Grant, Abstract No. 23, in Fort Bend County. That certificate also authorizes use of the bed and banks of Dry Creek to transport water to Smithers Lake, operated in conjunction with the Parish facility.

Applicant Information

TXU Mining Company LP
1601 Bryan Street
Dallas, Texas 75201

Notice indicates that Applicant proposes, among other things, to construct and maintain five permanent on-channel reservoirs on various tributaries in the Brazos River Basin to impound a total of 1,792.10 acre feet of water. Applicant also proposes to appropriate 1,000 acre-feet of state water from multiple diversion points at the same locations. Information in the application file available through your office indicates that state water would be available to satisfy the requested appropriation only infrequently.

Effect of Proposed Water Right Amendment

Impoundment and diversion of streamflow in upstream tributaries, as proposed in Application No. 5931, will diminish the amount of water available at NRG's diversion point authorized in Certificate of Adjudication No. 12-5320. In the absence of a watermaster or other agency administration of water rights in the Brazos River Basin, the granting of such upstream water rights with low reliability and uncertain accounting threatens NRG's water rights and uses downstream. Any interruption of dependable water supply for the Parish facility would have critical adverse impact on NRG Texas's operations and the customers it serves. In these respects and others, granting Application No. 5931 would directly affect NRG Texas's legal rights, duties, privileges, power and economic interests.

NRG Texas is an affected person with personal justiciable interests in the matters put at issue by Application No. 5931 that are not common to the general public and has standing to make this request as contemplated in TEX. WATER CODE ANN. § 5.115 (Vernon 2000 and Supp. 2005) and Rules of the Texas Commission on Environmental Quality, 30 TEX. ADMIN. CODE § 55.256(a) (for determining who is an affected person, all relevant factors should be considered, including but not limited to whether the interest claimed is one protected by the law under which the application will be considered, the relationship between the interests claimed and the application, the likely impact of granting the application on the health, safety, and use of property of the person, the likely impact of granting the application on use of the impacted natural

Ms. LaDonna Castanuela
December 4, 2006
Page 3 of 3

resource by the person and, for governmental entities, their statutory authority over or interest in the issues relevant to the application).

Location and Distance of Water Rights from the Proposed Activity:

NRG Texas' diversion point is approximately 129 river miles downstream of the confluence of the Navasota and Brazos Rivers, and approximately 200 miles downstream of the proposed impoundment and diversion locations.

Conditions in Proposed Permit which may Satisfy Protestant's Concerns:

NRG Texas is hopeful that the Applicant will come forward with additional information and/or modifications to its application that will address the issues outlined above, and is willing to discuss settlement of its protest with the Applicant at any time. However, in the absence of the agency's technical review and a draft permit, if any will be proposed, NRG Texas is not yet able to propose permit conditions that would satisfy its concerns. NRG Texas also must reserve the right to raise additional issues during the pendency of the application.

Conclusion:

In consideration of the matter discussed above, NRG Texas asks that its request for contested case hearing be granted.

Very truly yours,



Steve Winn, President
NRG Texas LP

WDP

Cc: Carolyn Ahrens Booth, Ahrens & Werkenthin

¹ See also *Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Envtl. Justice*, 962 S.W.2d 288 (Tex. App.—Austin 1998, writ den'd) (the standard regarding affected person does not require that a party show it will ultimately prevail on the merits, but simply that it potentially will suffer harm or have a justiciable interest that will be affected); *Texas Rivers Protection Ass'n v. Texas Natural Resource Conservation Comm'n*, 910 S.W.2d 147, 151 (Tex. App.—Austin 1995, writ den'd) ("the right to participate in proceedings is construed quite liberally to encourage varying points of view")

NRG Texas



FACSIMILE TRANSMITTAL SHEET

TO:

Ms. La Donna Castanuela

FROM:

Jason Fluharty

COMPANY:

DATE: 12/4/06

FAX NUMBER:

512-239-3311

TOTAL NO. OF PAGES
INCLUDING COVER: 4

PHONE NUMBER

SENDER'S FAX NUMBER:

RE:

SENDER'S PHONE NUMBER

713-795-6209

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY☐ PLEASE RECYCLE

NOTES/COMMENTS:

Water Right Application No. 5931